

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Gilbert Salinas,**  
Plaintiff,

v.

**Decedents Estate of Lloyd S.  
Whaley;** and Does 1-10,  
Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For** Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act

Plaintiff Gilbert Salinas complains of Defendants Decedents Estate of  
Lloyd S. Whaley; and Does 1-10, ("Defendants") and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is a  
paraplegic who uses a wheelchair for mobility.

2. Defendants are, or were at the time of the incidents, the real property  
owners, business operators, lessors and/or lessees for the shopping plaza  
("Plaza") located at or about 6400 E. Stearns Street, Long Beach, California.

1       3. Plaintiff does not know the true names of Defendants, their business  
2 capacities, their ownership connection to the property and business, or their  
3 relative responsibilities in causing the access violations herein complained of,  
4 and alleges a joint venture and common enterprise by all such Defendants.  
5 Plaintiff is informed and believes that each of the Defendants herein,  
6 including Does 1 through 10, inclusive, is responsible in some capacity for  
7 the events herein alleged, or is a necessary party for obtaining appropriate  
8 relief. Plaintiff will seek leave to amend when the true names, capacities,  
9 connections, and responsibilities of the Defendants and Does 1 through 10,  
10 inclusive, are ascertained.

11  
12       **JURISDICTION & VENUE:**

13       4. This Court has subject matter jurisdiction over this action pursuant to  
14 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
15 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16       5. Pursuant to pendant jurisdiction, an attendant and related cause of  
17 action, arising from the same nucleus of operative facts and arising out of the  
18 same transactions, is also brought under California's Unruh Civil Rights Act,  
19 which act expressly incorporates the Americans with Disabilities Act.

20       6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
21 founded on the fact that the real property which is the subject of this action is  
22 located in this district and that Plaintiff's cause of action arose in this district.

23  
24       **FACTUAL ALLEGATIONS:**

25       7. The Plaintiff went to the Plaza in December 2014 to pick up his shoes  
26 and to grab something to eat.

27       8. The Plaza is a facility open to the public, a place of public  
28 accommodation, and a business establishment.

1       9. Parking spaces are facilities, privileges and advantages offered by  
2 defendants to their customers at the Plaza.

3       10. Although parking is provided to patrons, there is not a single  
4 functioning and compliant handicap parking space. Whether through neglect,  
5 apathy or otherwise, the defendants have permitted the handicap parking  
6 spaces and signage to either deteriorate to the point of being non-functioning  
7 or to be maintained incorrectly. The wheelchair logo has faded to near  
8 oblivion, the mandated "NO PARKING" lettering does not exist on the access  
9 aisle. There is no blue border around the space where an access aisle is  
10 supposed to exist. Non-disabled persons can park in the supposedly handicap  
11 parking space or access aisle with impunity.

12       11. Additionally, there was no accessible path of travel from the parking  
13 into the entrance of the businesses. There are sidewalks located in front of  
14 the parking spaces reserved for use by persons with disabilities. As a result,  
15 the plaintiff is required to travel through the vehicular drive path in his  
16 wheelchair. This is dangerous for plaintiff.

17       12. The plaintiff personally encountered this problem. This inaccessible  
18 condition denied the plaintiff full and equal access.

19       13. Plaintiff would like to return and patronize the Plaza but will be  
20 deterred from visiting until the defendants cure the violations. Plaintiff lives  
21 about 5 miles from the Plaza. The Plaza is conveniently located. Because of  
22 its location, plaintiff has, on occasion, wanted to return to the Plaza but he  
23 has been deterred from doing so. Plaintiff would like to return.

24       14. The defendants have failed to maintain in working and useable  
25 conditions those features required to provide ready access to persons with  
26 disabilities.

27       15. Given the obvious and blatant violations, the plaintiff alleges, on  
28 information and belief, that there are other violations and barriers on the site

1 that relate to his disability. Plaintiff will amend the complaint, to provide  
 2 proper notice regarding the scope of this lawsuit, once he conducts a site  
 3 inspection. However, please be on notice that the plaintiff seeks to have all  
 4 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191  
 5 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,  
 6 he can sue to have all barriers that relate to his disability removed regardless  
 7 of whether he personally encountered them).

8 16. Additionally, on information and belief, the plaintiff alleges that the  
 9 failure to remove these barriers was intentional because: (1) these particular  
 10 barriers are intuitive and obvious; (2) the defendants exercised control and  
 11 dominion over the conditions at this location and, therefore, the lack of  
 12 accessible facilities was not an “accident” because had the defendants  
 13 intended any other configuration, they had the means and ability to make the  
 14 change.

15  
 16 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 17 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiff and against all  
 18 defendants (42 U.S.C. section 12101, et seq.)

19 17. Plaintiff repleads and incorporates by reference, as if fully set forth  
 20 again herein, the allegations contained in all prior paragraphs of this  
 21 complaint.


22 18. Under the ADA, it is an act of discrimination to fail to ensure that the  
 23 privileges, advantages, accommodations, facilities, goods and services of any  
 24 place of public accommodation is offered on a full and equal basis by anyone  
 25 who owns, leases, or operates a place of public accommodation. See 42  
 26 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 27 a. A failure to make reasonable modifications in policies, practices,  
 28 or procedures, when such modifications are necessary to afford

goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix “D.”

c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

19. Any business that provides parking spaces must provide accessible parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. To qualify as a reserved handicap parking space, the space must be properly marked and designated. Under the ADA, the method and color of marking are to be addressed by State or local laws or regulations. See 36 C.F.R., Part 1191, § 502.3.3. Under the California Building Code, to properly and effectively reserve a parking space for persons with disabilities, each such space must be identified with a reflectorized sign permanently posted adjacent to and visible from each stall or space. CBC § 1129B.4. The sign must consist of the International Symbol of Accessibility () in white on a blue background. *Id.* It cannot be smaller than 70 square inches and must be mounted so that there is a minimum of 80 inches from the bottom of the sign to the parking space.

1 *Id.* Signs must be posted so that they cannot be obscured by a vehicle parking  
2 in the space. *Id.* An additional sign or additional language below the symbol  
3 of accessibility must state, “Minimum Fine \$250” to ensure that the space  
4 remains available for persons with disabilities. *Id.* Another sign must be  
5 posted in a conspicuous place at the entrance to the parking lot or  
6 immediately adjacent to each handicap parking space, with lettering 1 inch in  
7 height, that clearly and conspicuously warn that unauthorized vehicles  
8 parking in the handicap parking spaces can be towed at the owner’s expense.  
9 *Id.* Additionally, the surface of the handicap parking stall must have a profile  
10 view of a wheelchair occupant (♿) that is 36 inches by 36 inches. *Id.* And the  
11 surface of the access aisle must have a blue border. CBC § 1129B.3. The  
12 words “NO PARKING” in letters at least a foot high must be painted on the  
13 access aisle. *Id.*

14 20. Here, the parking spaces were faded, there were no blue lines around  
15 the parking space, there were no “NO PARKING” warnings (they had faded  
16 beyond recognition) and the access aisles are not compliant. In sum, the  
17 parking simply failed to comply.

18 21. Under the ADA, there must be an accessible route within the boundary  
19 of the site from the accessible parking to the accessible building entrance they  
20 serve. 1991 Standards § 4.3.2(1); 2010 Standards § 206.2. The accessible  
21 route shall, to the maximum extent feasible, coincide with the route for the  
22 general public. *Id.* The accessible route must be at least 36 inches in width  
23 except at doors. 1991 Standards § 4.3.3; 2010 Standards § 403.5.1.

24 22. Here, the failure to provide an accessible path of travel from the  
25 parking spaces reserved for use by persons with disabilities to the store  
26 entrances is a violation of the law.

27 23. A public accommodation must maintain in operable working condition  
28 those features of its facilities and equipment that are required to be readily

1 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

2 24. Here, the failure to ensure that the accessible facilities were available  
3 and ready to be used by the plaintiff is a violation of the law.

4 25. Given its location and options, the Plaza is a business that the plaintiff  
5 will continue to desire to patronize but he has been and will continue to be  
6 discriminated against due to the lack of accessible facilities and, therefore,  
7 seeks injunctive relief to remove the barriers.

8  
9 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
10 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §  
11 51-53)

12 26. Plaintiff repleads and incorporates by reference, as if fully set forth  
13 again herein, the allegations contained in all prior paragraphs of this  
14 complaint.

15 27. Because the defendants violated the plaintiffs' rights under the ADA,  
16 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.  
17 Code § 51(f), 52(a).)

18 28. Because the violation of the Unruh Civil Rights Act resulted in  
19 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
20 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
21 55.56(a)-(c).)

22  
23 **PRAYER:**

24 Wherefore, Plaintiff prays that this court award damages and provide  
25 relief as follows:

26 1. For injunctive relief, compelling defendants to comply with the  
27 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
28

1 Plaintiffs are not invoking section 55 of the California Civil Code and is not  
2 seeking injunctive relief under the Disabled Persons Act at all.

3 2. Damages under the Unruh Civil Rights Act which damages provide for  
4 actual damages and a statutory minimum of \$4,000.

5 3. Reasonable attorney fees, litigation expenses and costs of suit,  
6 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

7  
8 Dated: March 20, 2015

CENTER FOR DISABILITY ACCESS

9  
10 By:   
11 Mark Potter, Esq.  
12 Attorneys for Plaintiff  
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